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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOE TELEVARA BARAJAS,

Defendant and Appellant.

F061618

(Super. Ct. Nos. CRM000508 &  
MF47715)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Merced County. Marc A. Garcia, Judge.

Robert L. Angres, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Charles A. French and John G. McLean, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Cornell, Acting P.J., Dawson, J. and Kane, J.

Defendant Joe Televara Barajas pled guilty to assault with a firearm. He was sentenced in this case and another one in which he violated his probation. On appeal, he raises sentencing issues only. We will remand with directions to modify the abstract of judgment, and we will affirm the judgment as so modified.

### **PROCEDURAL SUMMARY**<sup>1</sup>

#### ***Criminal Threat and Probation***

On April 24, 2008, in Merced County Superior Court case No. MF47715,<sup>2</sup> defendant pled no contest to making a criminal threat (Pen. Code, § 422)<sup>3</sup> and admitted a prior prison term allegation (§ 667.5, subd. (b)). The remaining charges were dismissed. The trial court sentenced defendant to three years in prison, plus a consecutive one-year prior prison term enhancement. The court suspended execution of the sentence and granted three years' probation with nine months' jail time, and imposed a \$200 restitution fine (§ 1202.4, subd (b)).

#### ***Assault with a Firearm and Probation Violation***

On May 8, 2009, in case No. CRM000508, defendant was charged with new crimes, including assault with a firearm. By committing these new crimes and other infractions, defendant violated his probation in case No. MF47715.

#### ***Sentencing in Both Cases***

On November 8, 2010, defendant pled guilty in case No. CRM000508 to assault with a firearm (§ 245, subd. (a)(2)) and admitted a firearm use allegation (§ 12022.5, subd. (a)). The remaining charges were dismissed. The trial court sentenced defendant

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<sup>1</sup> Because defendant raises only sentencing issues, the facts of the underlying crimes are not relevant.

<sup>2</sup> All further references to case numbers are to Merced County Superior Court cases unless otherwise noted.

<sup>3</sup> All statutory references are to the Penal Code unless otherwise noted.

to 12 years in prison, plus a consecutive 10-year firearm use enhancement. The court imposed a \$1,000 restitution fine (§ 1202.4, subd. (b)) and a \$1,000 parole revocation fine (§ 1202.45), which it suspended.

In case No. MF47715, the trial court revoked probation and imposed the previously suspended three-year prison term. The court imposed a \$400 restitution fine (§ 1202.4, subd. (b)) and a \$400 parole revocation fine (§ 1202.45), which it suspended.

## **DISCUSSION**

### **I. Fines**

Defendant contends, and the People concede, that the trial court improperly imposed the \$400 restitution fine and \$400 parole revocation fine in case No. MF47715 because the restitution fine, as originally imposed, was \$200. (§ 1202.45;<sup>4</sup> *People v. Marichalar* (2003) 144 Cal.App.4th 1331, 1337 [original restitution fine remains in force and parole revocation fine must equal it].) We agree and will direct the trial court to reduce the two fines to \$200 each.

### **II. Custody and Conduct Credits**

Defendant also contends, and the People again concede, that the abstract of judgment incorrectly reflects his custody and conduct credits in case No. CRM000508. The parties agree that defendant is entitled to 679 days rather than 678 days, based on 591 actual days in custody and 88 days of presentence conduct credit. We will direct the trial court to modify the abstract of judgment.

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<sup>4</sup> Section 1202.45 provides in part: “In every case where a person is convicted of a crime and whose sentence includes a period of parole, the court shall at the time of imposing the restitution fine pursuant to subdivision (b) of Section 1202.4, assess an additional parole revocation restitution fine *in the same amount* as that imposed pursuant to subdivision (b) of Section 1202.4.” (Italics added.)

### **DISPOSITION**

The matter is remanded to the trial court with directions to modify the abstract of judgment to reflect a \$200 restitution fine and a \$200 parole revocation fine in case No. MF47715, and 679 days of custody and conduct credits in case No. CRM000508. As so modified, the judgment is affirmed.